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Miscellaneous—Sovereign Power of State

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attorney's lien,[19] as well as provision for substitution by order under Rule 56, there appears to be little merit in the argument of the dissenting justices that the first attorney stood in the way of further progress and that the stipulation was therefore not in any real sense voluntary. The interests of both attorneys and clients appear to be adequately protected, and there should have been no need for a stipulation for substitution in this case if either the second attorney or the client was dissatisfied with the provisions urged by the original attorney.

Reduced to its simplest terms, this case reaffirms the position of *Matter of Peters*[20] that a court is without power "to remake or change a contract of retainer validly made"[21] or, as here, a stipulation of substitution providing for compensation for an attorney's services.

Sovereign Power Of State

The state as quasi-sovereign and representative of the interests of the public has standing in court to protect the navigable and public bodies of water within its territory.[22] The ends of such protection must be for the best interest of the public.[23]

In *People v. System Properties*[24] the people sought to have the state declared owner of the bed of an outlet from Lake George. Their object was to place in the state, control over a dam which lay in that outlet and affects the water level of Lake George. The plaintiff alleged that the Lake and the outlet are navigable waters and the state has title to their beds and therefore power to control the dam and its interference with the public enjoyment of Lake George. The defendant countered that the outlet was nonnavigable and that it owned the bed of the outlet at the dam site.

The Court seemed to go out of its way to place ownership of the dam site in defendant by adverse possession when it appeared that their deed would not include the bed of the outlet. Next it in effect deemed the outlet nonnavigable and

19. Judge Van Voorhis in his dissent in the principal case at 650, 162 N.Y.S.2d at 351:

> The object of section 475 of the Judiciary Law is to supply swift and expeditious mode of trying disputes of this nature . . . . N.Y.R. CIV. PRAC. 56, *supra* note 3, provides for changing attorney by order.

20. 271 App. Div. 518, 67 N.Y.S.2d 305 (3d Dep't 1946), *mod. on other grounds*, 296 N.Y. 974, 73 N.E. 2d 560 (1947).

21. *Id.* at 523, 67 N.Y.S.2d at 310.

22. Hudson Water Co. v. McCarter, 209 U.S. 349 (1908); Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); Kansas v. Colorado, 185 U.S. 125 (1902).

23. Niagara Falls Power Co. v. Water P. & C. Commission, 267 N.Y. 265, 196 N.E. 51 (1935); Roth v. State, 262 App. Div. 370, 29 N.Y.S.2d 442 (4th Dep't 1941).

24. 2 N.Y.2d 330, 160 N.Y.S.2d 859 (1957).

that the dam itself did not interfere with any public use. After thus setting aside the possibility of control over the outlet based upon ownership or navigability the Court then based control upon an apparently new idea. That being that the state as owner of Lake George, a public body of water, has power to control, license, or forbid structures in its tributaries or in outlets therefrom, even if such tributaries are nonavigable, if the structures have an affect upon the state waters. This the Court said is a legislative power and cannot be exercised by the courts; as the trial court has suggested when it placed the Superintendent of Public Works in control of the water level of Lake George.

This theory of control is apparently based on a necessary and proper concept stemming from the state's power to control public and navigable bodies of water.[26] This is a logical and necessary extension of the state's control over its waterways, and is especially helpful when there is a lack of state ownership and navigability as a basis for control. It is noted that the Court was careful to properly place this power in the hands of the legislature rather than in itself,[26] thereby leaving the parties and the problem in status quo until such time as the legislature takes action.

Labor Law—Matters For Arbitration

Although arbitration clauses under collective bargaining agreements were unenforceable at common law,[27] explicit statutory provision for their enforcement in New York is found in section 1450 of the Civil Practice Act. However, the courts will order arbitration only if the dispute is part of a valid contract duly entered into,[28] and if it falls within the terms of the agreement to arbitrate.[29]

Two cases recently before the Court of Appeals concerned matters subject to arbitration under such clauses. One clause referred to any controversy as to validity, interpretation or performance of the agreement, and the other encompassed any dispute arising out of, or relating to, the agreement. With respect to the first, the Court, in *Wrap-Vertiser Corporation v. Plotnick*,[30] held that the arbitrator does not have jurisdiction over a claim for damages based upon fraud and misrepresentation in the inducement of the collective agreement. With respect to the second clause, the Court, in *Matter of Potoker (Brooklyn Eagle)*,[31] held that, although the bar-

25. See notes 22 and 23 *supra*.
26. Bedlow v. New York Floating Dry Dock Co., 112 N.Y. 263, 19 N.E. 800 (1889).
27. Matter of Gantt, 297 N.Y. 433, 79 N.E.2d 815 (1948).
28. Application of Spectrum Fabric Co., 285 App. Div. 710, 139 N.Y.S.2d 612 (1st Dep't 1955), *aff'd* 309 N.Y. 709, 128 N.E.2d 416 (1955); Determination of initial validity of the contract cannot be taken from the court. Martocci v. Martocci, 42 N.Y.S.2d 222 (Sup. Ct. 1943), *aff'd* 266 App. Div. 840, 43 N.Y.S.2d 516 (1st Dep't 1943).
29. Application of Spectrum Fabric Co., note 28 *supra*.
30. 3 N.Y.2d 17, 163 N.Y.S.2d 639 (1957).
31. 2 N.Y.2d 553, 161 N.Y.S.2d 609 (1957).